

HOUSE BILL 458

By Thompson

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 7; Title 8; Title 49; Title 50; Title 62; Title 63
and Title 68, relative to essential workers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 1, Part 3, is amended by
adding the following as a new section:

(a) As used in this section:

(1) "Employee" means an individual who performs services for an
employer for valuable consideration;

(2) "Employer" means a formula retail store, large employer,
transportation business, or franchisee or subcontractor;

(3) "Essential worker" means an employee of a business or entity who is
providing essential services or functions during a state of emergency or disaster,
declared by the governor pursuant to § 58-2-107, and who is designated as an
essential worker pursuant to law, rule, regulation, or executive order, including:

(A) Essential healthcare operations, including research and
laboratory services;

(B) Essential infrastructure, including utilities, telecommunication,
airports, and transportation;

(C) Essential manufacturing, including food processing and
pharmaceuticals;

(D) Essential retail, including grocery stores and pharmacies;

(E) Essential manufacturing, including food processing and packing;

(F) Essential services, including trash collection, mail, and shipping;

(G) News media;

(H) Banks and financial institutions;

(I) Providers of basic necessities to economically disadvantaged populations;

(J) Construction;

(K) Vendors of essential services necessary to maintain the safety, sanitation, and essential operations of residences or essential businesses; and

(L) Vendors that provide essential services or products, including logistics and technology support, child care, and services needed to ensure the continuing operation of government agencies and provide for the health, safety, and welfare of the public;

(4) "Formula retail store" means an individual or entity that operates a retail sales or restaurant establishment either directly or through a franchisee or subcontractor and that, along with eleven (11) or more other retail sales or restaurant establishments located in this state, maintains two (2) or more of the following:

(A) A standardized array of merchandise;

(B) A standardized façade;

(C) A standardized decor and color scheme;

(D) A uniform apparel;

(E) A standardized signage;

(F) A trademark; or

(G) A service mark;

(5) "Franchisee or subcontractor" means an individual or entity that:

(A) Operates under a franchise agreement with a formula retail store or large employer; or

(B) Provides services, including janitorial, maintenance, security, staffing, passenger services, food services, or temporary services to a formula retail store, large employer, or transportation business;

(6) "Large employer":

(A) Means an individual or entity that has annual gross revenue of fifty million dollars (\$50,000,000) or more, or had annual gross revenue of fifty million dollars (\$50,000,000) or more in any of the past three (3) fiscal or calendar years; and

(B) Does not include:

(i) An individual or entity whose principal industry is manufacturing; or

(ii) A nonprofit organization;

(7) "Manufacturing" means the process of working raw materials into products suitable for use or which gives new shapes, new quality, or new combinations to matter which has already gone through some artificial process by the use of machinery, tools, appliances, or similar equipment;

(8) "Nonprofit organization" means an entity exempt from taxation under § 501(c)(3) of the federal Internal Revenue Code (26 U.S.C. § 501(c)(3)); and

(9) "Transportation business" means an industry, business, or establishment operated for the purpose of conveying persons or property from one (1) place to another whether by rail, highway, air, or water, and operations and services in connection with that conveyance.

(b) During a state of emergency or disaster, declared by the governor pursuant to § 58-2-107, an employer of an essential worker shall adopt and implement the following essential workers' bill of rights:

(1) The employer shall provide the employer's essential workers with adequate personal protective equipment and products at no cost to the workers, including hand sanitizer, medical or surgical masks, medical or surgical gloves, disposable gowns, and any other equipment or product identified in emergency rules promulgated by the commissioner of labor and workforce development, in consultation with the commissioner of health;

(2) The employer shall inform the employer's essential workers when an essential worker has contracted a disease related to the state of emergency or disaster and of the essential workers' potential exposure to the disease;

(3) The employer shall not retaliate, discriminate, or take adverse action against an essential worker for reporting any unsafe work environment;

(4) The employer shall pay the employee hazard pay for any day that the employee performs essential work for the employer outside of the employee's residence. Hazard pay under this subdivision (b)(4) must be a percentage or a fixed dollar amount. However, hazard pay shall not exceed twenty-five thousand dollars (\$25,000) in a year for an essential worker earning less than two hundred thousand dollars (\$200,000) per year or five thousand dollars (\$5,000) in a year for an essential worker earning more than two hundred thousand dollars

(\$200,000). Hazard pay must be in addition to, and not part of, an essential worker's basic annual salary, and shall not affect or impair performance advancement payments, performance awards, longevity payments, or rights or benefits to which an essential worker is entitled. This subdivision (b)(4) does not apply to a bona fide executive, administrative, or professional employee who is exempt from overtime under the federal Fair Labor Standards Act of 1938 (29 U.S.C. § 201 et seq.). Hazard pay under this subdivision (b)(4) is terminated upon the cessation of the state of emergency or disaster; and

(5) The employer shall pay the costs of childcare or health care needed by an essential worker for the duration of the state of emergency or disaster.

(c) Upon adoption of the essential workers' bill of rights described in subsection (b), the employer shall distribute the bill of rights to essential workers; make the bill of rights available on the employer's website or post the bill of rights at the employer's place of business if the employer does not have a website; and include links or information on the employer's website to file a report and seek a response from the employer or the state regarding an unsafe work environment or failure to comply with this section.

(d) During a state of emergency or disaster, declared by the governor pursuant to § 58-2-107, an employee may refuse to work for an employer even if classified as an essential worker. Refusal to work for an employer pursuant to this subsection (d) is not grounds for the employer to discriminate, dismiss, discharge, reduce hours, or take an adverse action against the employee.

(e) Violations of this section, or rules issued pursuant to this section, must be prosecuted by the district attorney general of the judicial district in which the violation occurs, or the attorney general and reporter.

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it.